

APPEAL NO. 022847
FILED JANUARY 2, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on September 23, 2002. The hearing officer issued a Texas Workers' Compensation Commission Order for Attorney's Fees (Order) on October 28, 2002, approving 14.10 hours of the 16.30 hours requested attorney's fees for the appellant (attorney) and .40 hours of the 4.20 hours of the requested legal assistant fees. The hearing officer approved the \$207.02 of requested expenses. The attorney appeals and requests that he be awarded \$467.00 in additional attorney fees. There is no response from either respondent 1 (carrier) or respondent 2 (claimant).

DECISION

Reversed and rendered.

We review attorney's fees cases under an abuse-of-discretion standard. Texas Workers' Compensation Commission Appeal No. 951196, decided August 28, 1995. The Attorney Fee Processing System (AFPS) printout shows that the attorney submitted a justification text for the fees requested in excess of the guidelines. The guidelines in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.4(c) (Rule 152.4(c)) read that four hours preparation time for the CCH is reasonable. The reason the attorney gave for exceeding the guidelines was the document review and preparation for discovery/exchange for the CCH. The total time, including attorneys and legal assistants, spent in preparation for the CCH is shown as six hours. The AFPS indicates that the hearing officer entered a log text explaining his decision to deny the fees in excess of the guidelines as being unreasonable because they seem to be requesting payment for preparation for the benefit review conference (BRC) after the BRC. The logical reading of the attorney's justification text is that the time requested, after the BRC, was that spent in preparation for the CCH. The hearing officer noted in his order that the reason for disallowing the 6.00 total hours in dispute was "Ex Guideline/Unreasonable."

A fee may exceed the guidelines provided the attorney requesting the fee provides a justification for doing so. Rule 152.4(b); Texas Workers' Compensation Commission Appeal No. 970248, decided March 31, 1997. In this instance, the attorney exceeded the guidelines as espoused in the rule by two hours and provided lengthy justification for so doing. In this instance, it does not appear that the hearing officer considered the justification text and that he gave an unsound explanation for disallowing the disputed items. As such, his denial of the requested fees was an abuse of discretion.

In view of the justification text and the nature of the items in dispute, we reverse the Order and render a decision that the disputed items are approved for additional time

of 2.20 hours of attorney time, (.80 hours at \$145.00 per hour for one attorney and 1.40 hours at \$115.00 per hour, for another attorney) and of 3.80 hours of legal assistant time at \$50.00 per hour, for a total additional approved fee of \$467.00.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Terri Kay Oliver
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Thomas A. Knapp
Appeals Judge